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7 **CERTIFIED PROFESSIONAL GUARDIAN BOARD**

8 **IN THE MATTER OF:**

**CPGB NO. 2005-009**

9 **OWEN J. WALES,**  
10 **CPG No. 5314**

11 **and**

12 **FIDUCIARY SERVICES**  
13 **FOUNDATION,**  
**CPGA No. 5135**

**DISCIPLINARY PROCEEDING**  
**COMPLAINT**  
**(DR 510)**

14 **Respondents.**

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16 Pursuant to General Rule 23 (GR 23) and the Disciplinary Regulations for Certified  
17 Professional Guardians, the Certified Professional Guardian Board (hereinafter "Board")  
18 alleges violations of the Disciplinary Regulations by Owen J. Wales and Fiduciary Services  
19 Foundation as follows:

20 **1. JURISDICTION**

21 **1.1** During all times relevant to this action, Owen J. Wales (Mr. Wales) was a  
22 certified professional guardian. Mr. Wales's certified professional guardian number is 5314.

23 **1.2** During all times relevant to this action, Fiduciary Services Foundation (FSF)  
24 was a certified professional guardian agency. FSF's certification number is 5135.  
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1           **2.     ALLEGED FACTS**

2           **2.1**     During the time period of June 16, 2000 to January 17, 2001, the two designated  
3 certified professional guardians of FSF were Owen Wales and Albert Maimon. During the  
4 time period of January 17, 2001 to March 8, 2004, the two designated certified professional  
5 guardians of FSF were Owen Wales and Allan Wales.<sup>1</sup> On March 8, 2004, Stacy Wikle and  
6 Jason Woehler were appointed as designated guardians of the agency. The conduct which is  
7 the subject of this complaint occurred during the time period when Owen Wales and Allan  
8 Wales were the designated certified professional guardians of FSF.  
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10           **2.2**     On May 13, 1986, the Snohomish County Superior Court appointed FSF as the  
11 guardian of the estate in Snohomish County Superior Court Case No. 78-4-00246-9<sup>2</sup>. FSF  
12 remained the guardian of the estate until FSF was dismissed, but not discharged by the court on  
13 September 23, 2004.  
14

15           **2.3**     On July 13, 2004, a petition was filed to have a guardian of the person  
16 appointed for the incapacitated person in the case referred to above, Snohomish County  
17 Superior Court Case No. 78-4-00246-0. On September 14, 2004, Pacific Guardianship  
18 Services was appointed as guardian of the person. On or about September 23, 2004, a petition  
19 was filed to have Pacific Guardianship Services replace FSF as guardian of the estate because  
20 the guardian ad litem recommended consolidating the guardianship of the person and estate  
21 under one guardianship agency.  
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25           <sup>1</sup> Allan Wales was decertified for noncompliance with continuing education requirements on August 10,  
26 2004.

<sup>2</sup> The venue of the guardianship has been transferred to Pierce County and is now Pierce County Superior  
Court case number 06-4-00221-3.

1       **2.4**     On or about September 23, 2004, FSF prepared and filed its petition for order  
2 approving guardian's activities and final accounting. A different guardian ad litem was  
3 appointed at that hearing to review the accountings.

4       **2.5**     On May 26, 2005, the Snohomish County Superior Court issued an order in  
5 which the court concluded that FSF had breached its fiduciary duty to the incapacitated person  
6 by failing to make full, complete, and accurate disclosures of expenditures, by failing to obtain  
7 court permission prior to making a gift, by failing to investigate the reasonableness of rental  
8 expenditures, and by failing to investigate the reasonableness of maintenance expenditures.  
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10       **2.6**     The incapacitated person rented a home that was owned by his brothers. The  
11 rental amount was \$1300 per month, the approximate amount of the mortgage. FSF did not  
12 enter into a written rental agreement with the incapacitated person's brothers. On May 26,  
13 2005, the court found that FSF overpaid rent for the home in which the incapacitated person  
14 lived by \$200.00 a month for a period of 34 months based on what the market rate was for  
15 similar rentals.  
16

17       **2.7**     FSF did not view or inspect the home the incapacitated person rented prior to  
18 the incapacitated person's move into the home which occurred on or about October 2001. FSF  
19 did not view or inspect the home until Mr. Wales did so on December 2, 2003. On May 26,  
20 2005, the court found that FSF failed to visit the incapacitated person or conduct an inspection  
21 of his new residence.  
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23       **2.8**     In its November 8, 2004 Memorandum of Prior Guardian, FSF stated that the  
24 incapacitated person contributed \$2000 towards the closing costs for his brothers' purchase of  
25 the home in which the incapacitated person resided. In an October 9, 2001 letter, the Veteran's  
26 Administration stated that it had no objection to the expenditure of \$2000 towards the deposit

1 on the house. However, in its accounting filed on May 13, 2002, FSF reported the \$2000 as a  
2 gift. FSF did not seek court approval prior to gifting these funds from the incapacitated  
3 person's estate.

4       **2.9** In its accounting for the period of May 5, 2003 to May 4, 2004, FSF listed home  
5 maintenance expenses totaling over \$1800, which included \$1142 for bathroom repair and  
6 \$375 for painting. The guardian ad litem recommended that \$1517.40 of those maintenance  
7 expensed be disallowed. The guardian ad litem stated that the bathroom repairs appeared to be  
8 duplicative of repairs made in the prior accounting period. The guardian ad litem stated that  
9 painting was something normally done by an owner, at the owner's expense. On May 26,  
10 2005, the court found that FSF wrongfully distributed \$1517.40 of the incapacitated person's  
11 estate on home maintenance.  
12

13       **2.10** Owen Wales and the incapacitated person's brothers allowed the incapacitated  
14 person to believe that the incapacitated person owned the home, not that he rented it from his  
15 brothers. On or about October 11, 2002, Owen Wales requested E.Alexandra Ashleigh, MD at  
16 the Veteran's Administration to participate in the deception and not to reveal to the  
17 incapacitated person the fact that he rented, not owned the home.  
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19       **2.11** On or about May 16, 2005, FSF filed a motion for reconsideration of the court's  
20 May 4, 2005 order. On May 26, 2005, the court denied the motion for reconsideration.  
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22       **2.12** On or about July 1, 2005, FSF filed a written disclosure statement with the  
23 Board stating that there had been findings by a court that the guardian had breached its  
24 fiduciary duty to the incapacitated person, that the agency had been removed as guardian by  
25 court order, and that there was a judgment entered against the agency resulting from  
26 performance of services.

1       **3.       ALLEGED VIOLATIONS**

2       **3.1**     Based on the alleged facts set forth in paragraphs 2.1 through 2.12 above, Mr.  
3       Wales and FSF violated RCW 11.92.040, RCW 11.92.140, Standards of Practice (SOP) 401.1,  
4       401.4, 401.7, 401.16, 403, 403.2, 403.8, 406, 406.6, which provide in pertinent part:

5               **RCW 11.92.040** It shall be the duty of the guardian or limited guardian of an estate:

6               ....

7               (4) To protect and preserve the guardianship estate, to apply it as provided in this  
8               chapter, to account for it faithfully, to perform all of the duties required by law. . . .

9               **RCW 11.92.140** The court, upon the petition of a guardian of the estate of an  
10              incapacitated person. . . may authorize the guardian to take any action, or to apply  
11              funds not required for the incapacitated person's own maintenance and support, in any  
12              fashion the court approves as being in keeping with the incapacitated person's wishes so  
13              far as they can be ascertained. . . and to provide for gifts to such charities, relatives, and  
14              friends as would be likely recipients of donations from the incapacitated person.. . .

15              **SOP 401.1** The guardian shall at all times be thoroughly familiar with RCW 11.88,  
16              RCW 11.92, GR 23, these standards, and any other regulations or statutes which govern  
17              the conduct of the guardian in the management of affairs of an incapacitated person.  
18              When a question exists between the standards and a statute, timely direction shall be  
19              sought from the court. If a guardian is aware of a court order of the court in a specific  
20              case which may lead to a conflict with these regulations, the guardian shall disclose this  
21              to the court.

22              **SOP 401.4** The guardian shall not act outside of the authority granted by the court.

23              **SOP 401.7** Whenever feasible a guardian shall consult with the incapacitated person,  
24              and shall treat with respect, the feelings, values, and opinions of the incapacitated  
25              person. Wherever possible, the guardian shall acknowledge the residual capacity of the  
26              incapacitated person to participate in or make some decisions.

**SOP 401.16** Guardians of the Estate only shall maintain meaningful in-person contact  
              with their clients as necessary to verify the individual's condition and status and that  
              financial arrangements are appropriate.

**SOP 403** The guardian shall exhibit the highest degree of trust, loyalty, attentiveness,  
              and fidelity in relation to the incapacitated person.

**SOP 403.2** All expenses paid or incurred on behalf of the incapacitated person by the  
              guardian shall be documented, reasonable in amount, and incurred for the incapacitated  
              person's welfare.

1       **SOP 403.8** The guardian shall protect the incapacitated person's rights and best  
2       interests against infringement by third parties.

3       **SOP 406** The guardian shall assure competent management of the property and income  
4       of the estate. In the discharge of this duty, the guardian shall exercise the highest level  
5       of fiduciary responsibility, intelligence, prudence, and diligence and avoid any self-  
6       interest.

7       **SOP 406.6** When the available estate of the incapacitated person is sufficient, the  
8       guardian may petition the court for authority to make such gifts as are consistent with  
9       the wishes or past behavior of the incapacitated person, bearing in mind both  
10      foreseeable requirements of the incapacitated person and the advantages and  
11      disadvantages to the incapacitated person of such gifts, including tax consequences.

12      **3.2**     Based on the alleged facts and alleged violations set forth above, Mr. Wales and  
13      FSF's conduct constitutes grounds for discipline pursuant to General Rule (GR) 23(c)(2)(viii)  
14      and Disciplinary Regulation (DR) 503, which provide in pertinent part:

15               **GR 23 Rule for Certifying Professional Guardians – Certified Professional**  
16               **Guardian Board**

17               ...

18               (2) Duties and Powers.

19               ...

20               (viii) Grievances and Discipline. The Board shall adopt and implement procedures to  
21               review any allegation that a professional guardian has violated an applicable statute,  
22               fiduciary duty, standard of practice, rule, or regulation. The Board may impose  
23               sanctions upon a finding of violation. Sanctions may include decertification or lesser  
24               remedies or actions designed to ensure compliance with duties, standards, and  
25               requirements for professional guardians.

26               **DR 503** A professional guardian may be subject to disciplinary action for any of the  
                following:

                DR 503.1 Violation of or noncompliance with applicable statutes, court orders, court  
                rules, or other authority.

                DR 503.3 Failure to perform any duty one is obligated to perform as a professional  
                guardian.

                DR 503.4 Violation of the oath, duties, or standards of practice of a professional  
                guardian.

1 DR 516 The Board may order a professional guardian to pay costs including cost of the  
2 discipline process and any other directly provable expense, including attorney fees as  
3 part of the sanctions imposed. A Hearing Officer may recommend the payment of  
4 costs. Failure of a professional guardian to pay costs or to pay restitution when ordered  
to do so, or failure to comply with the terms entered, may constitute additional grounds  
for discipline.

5 **4. REQUEST FOR DISCIPLINARY ACTION AND SANCTIONS**

6 Based on the foregoing, it is requested that respondents Owen J. Wales and Fiduciary  
7 Services Foundation be found in violation of the statutes and regulations cited above and that  
8 disciplinary sanctions, remedies, and costs be imposed on respondents in accordance with the  
9 Disciplinary Regulations to include decertification as a professional guardian and/or guardian  
10 agency if warranted.

11 DATED this 24 day of November, 2008.

12 Certified Professional Guardian Board

13  
14 By: Sharon S. Eckholm  
15 Sharon S. Eckholm  
AOC Liaison to the Board  
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